



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/771,131	01/26/2001	Satoshi Mizutani	2309/01213	6716

7590

01/02/2003

DARBY & DARBY P.C.
805 Third Avenue
New York, NY 10022

EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT

PAPER NUMBER

1772

DATE MAILED: 01/02/2003

9

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application N .

09/771,131

Applicant(s)

MIZUTANI ET AL.

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication; even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
- 4a) Of the above claim(s) 8 and 9 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 8.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

RESPONSE TO AMENDMENT

WITHDRAWN REJECTIONS

1. The objections to the drawings of record in paper #6, page 2, paragraph #2 have been withdrawn.
2. The 35 U.S.C. §112 rejections of record in paper #6, pages 2-3, paragraph #4 have been withdrawn due to Applicant's amendment in paper #7.
3. The 35 U.S.C. §102 rejections of record in paper #6, pages 3-4, paragraphs #6-8 have been withdrawn due to Applicant's amendment in paper #7.
4. The 35 U.S.C. §103 rejections of record in paper #6, pages 5-7, paragraphs #10-12 have been withdrawn due to Applicant's amendment in paper #7.

NEW REJECTIONS

5. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 103

6. Claims 1, 2, 4, 5, 7, 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sorensen (4,327,730) in view of Gray et al. (5,660,788).

Sorensen discloses a topsheet of an absorbent article useful in such articles as diapers, bandages, catamenials, and the like (col. 1, lines 9-16). The topsheet comprises a thermoplastic film, which is perforated and has a plurality of nubbles protruding from the body side of the

Art Unit: 1772

topsheet (col. 3, line 66 to col. 4, line 32 and figure 3). The nubbles have a cross-sectional diameter of from about 0.0127 to about 0.279 mm and a height that is at least 30% of the cross-sectional diameter (greater than between 0.00381-0.0837 mm) (col. 4, lines 33-50).

The topsheet contacts the wearer's skin and is therefore preferably compliant, soft feeling, fluid permeable, and non-irritating to wearer's skin (col. 3, lines 66-68).

Sorensen discloses all the limitations of the instant claimed invention except for the topsheet further containing particulate material.

Gray discloses a topsheet for an absorbent article such as diapers, incontinent articles, sanitary napkins, and the like (col. 2, lines 15-16). The top sheet comprises a thermoplastic material which includes a particulate material embedded (convex portions) on the wearer-contacting surface of the web. The particulate material may be talc or clay. See column 5, lines 20-27 and lines 63-67. The addition of the particulate material to the wearer-contacting surface of the plastic topsheet reduces the plastic like feel associated with such films (col. 6, lines 7-16).

The topsheet is compliant, soft feeling and non-irritating to the wearer's skin (col. 4, lines 47-48).

Gray further discloses that the size of the particulate material is such that light incident upon the visible surface of the web is substantially diffused into a multiplicity of directions by the particulate material into a multiplicity of direction rather than being specularly reflected, thereby providing a non-glossy visible surface (col. 6, lines 1-6).

It would have been obvious to one of ordinary skill in the art to add the particulate material of Gray to the wearer-contacting surface of Sorensen's topsheet because the addition of the particulate material would reduce the plastic like feel associated with such films.

Art Unit: 1772

Gray does not disclose that the particulate material has a mean particle size in a range between 0.1 micrometer and 30 micrometer or amount of the particulate material. However, the exact size and amount of the particulate material is deemed to be a cause effective variable with regard to the ability of the particle to diffuse light and provided a softer feel. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such the mean particle size and amount through routine experimentation in the absence of a showing of criticality in the claimed combined thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill would have been motivated to optimize the size range of the particle to 0.1 to 30 micrometers and amount because smaller particles would produce a smoother more uniform touch to the sheet. Since, it would be obvious to optimize the particle size to applicant's claimed size the height of each protrusion is larger than that of the convex portion.

7. Claims 3, 6 and 12 rejected under 35 U.S.C. 103(a) as being unpatentable over Sorensen (4,327,730) in view of Gray et al. (5,660,788) as applied to claims 1, 2, 4, 5, 7, 10 and 11 above, and further in view of McCormack (5,955,187).

The combination of Sorensen and Gray disclose all the limitations of the instant claimed invention except for two different size particles and micropores around the particle material.

McCormack discloses a self-regulating breathable microporous film layer that transmits water vapor at normal conditions for use in personal care articles such as diapers (abstract and col. 1, lines 40-54). The film layer comprises a thermoplastic material comprising small filler particles surround by a void (micropore) (col. 4, lines 36-47). The particles are preferably about 1 micron and are made of clay (col. 5, lines 64-66).

Art Unit: 1772

It would have been obvious to one of ordinary skill in the art to add the filler particles and void of McCormack to the combination of Gray and Sorensen because it would all the topsheet of Gray and Sorensen to readily transmit water vapor. Furthermore, the exact size each particulate material is deemed to be a cause effective variable. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as the size of the filler particle to the surface particles and through routine experimentation in the absence of a showing of criticality in the claimed combined thickness. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated to choose a smaller particle size for the filler particles of McCormack and a larger size particle for the surface particles of Gray, because filler particles are typically smaller. The filler particles would need to be smaller to not effect the thickness of the film layer. Furthermore, the surface particle would be chosen to be larger than the filler particles in order to impart a smoother surface feel.

ANSWERS TO APPLICANT'S ARGUMENTS

8. Applicant's arguments filed in paper #7 regarding the 35 U.S.C. §112, §102 and §103 rejections of record have been considered but are moot since the rejections have been withdrawn.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 1772

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139. The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

12/20/02



HAROLD PYON
SUPERVISORY PATENT EXAMINER
1772

12/30/02